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Skagit County Auditor

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AFTER RECORDING RETURN TO:  
SKAGIT COUNTY HEARING EXAMINER  
1800 CONTINENTAL PLACE  
MOUNT VERNON, WA 98273

DOCUMENT TITLE: APPEAL OF ADMINISTRATIVE DECISION AP04-0119

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: CONRARDY STOWE, LLC

ASSESSOR NOS: P117754 and p73368

LEGAL DESCRIPTION: The subject property is located at Lots 14 and 15 of Dawn Addition to Fidalgo City, a portion of the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 18, Township 34 North, Range 2 East, W.M., Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

In the Matter of the Appeal of )

**CONRARDY STOWE LLC** )

Of an Administrative Decision )  
(PL00-0687) Requiring the Aggregation )  
Of Two Contiguous Parcels for )  
Development Purposes )

PL04-0119

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND DECISION**

This appeal came on regularly for hearing on November 3, 2004. Tom Moser, Attorney at Law, represented the Appellant. Don Anderson, Deputy Prosecutor, and Grace Roeder, Associate Planner, represented the Planning and Permit Center.

Testimony and argument were heard. Exhibits were offered and admitted. Based on the record made, the Hearing Examiner enters the following:

**FINDINGS OF FACT**

1. The subject property comprises Lots 14 and 15 of the Dawn Addition to Fidalgo City, located in the Dewey Beach area of Fidalgo Island in a portion of the SE1/4SW1/4 Sec 18, T34N, R2E, W.M. (Parcels #'s 117754 and 73368). The subdivision was recorded in 1955.
2. The two lots are contiguous rectangular parcels. Each is approximately 175 feet long and 95 feet wide. The lots bounded are by Ivy Street (Fourth Street) on the south and Bayview Street on the north. Jefferson Street abuts the west side of Lot 15. The east side of Lot 14 borders on Lot 13.
3. Lots 14 and 15 came together under one ownership in 1978. There was by then an existing residence on Lot 15. The parcels each exceeded the minimum lot size in effect at that time. Since then, they have been conveyed together.
4. The zoning of the area changed to Rural Intermediate in June of 1997 requiring a minimum lot size of 2.5 acres. This change made the lots subject to SCC 14.04.190(5). That subsection required that when a person acquires lots that are substandard, such property shall be aggregated by the Planning and Permit Center and the Assessor.
5. The Planning and Permit Center enforced this provision by treating any contiguous commonly-owned pair of substandard lots as one lot for development permit



purposes. Separate development permits for each lot were not allowed. The effect was to treat contiguous lots as having been aggregated, although no specific action was taken to provide notice of the aggregation on the County's records.

6. Lots 14 and 15 were acquired by Conrardy Stowe LLC in 1999. Lot 14 remained undeveloped.

7. In July of 2000, the County adopted a new Comprehensive Plan and development regulations (the Unified Development Code) that replaced the old lot aggregation regulation with a new code section: SCC 14.16.850(4). That section allowed the issuance of development permits on lots of record that do not meet minimum dimensional requirements of the zoning district if there is compliance with other provisions of the Code.

7. Along with other parts of the UDC, the provisions of SCC 14.16.850(4) were appealed to the Western Washington Growth Management Hearings Board which subsequently ruled that the section did not meet GMA requirements. This ruling was appealed to the Superior Court and thereafter, in connection with settlement negotiations, the old aggregation ordinance (SCC 14.04.190(5)) was brought back into effect through an interim regulation.

8. Under the interim scheme, a Boundary Line Adjustment effecting lot aggregation must be completed before issuance of any development permits. This approach was to remain in place until the Hearing's Board's ruling was reversed or until replacement regulations were approved. The interim ordinance became effective in January of 2002.

9. Thus, the period between July of 2000 and January of 2002 represents a "window" during which SCC 14.16.850, as initially adopted was in effect and applicable.

10. Thomas C. Stowe on behalf of Conrardy Stowe LLC applied for a Lot of Record Certification for Lots 14 and 15 on October 25, 2000 (PL000687). The Certification was completed in November of 2000.

11. In December of 2000, Conrardy Stowe received approval of soils tests for a septic system on Lot 14. On January 26, 2001, the design of the system was approved and an Onsite Sewage Permit (SW01-0041) was issued for its installation. The system approved was for a three-bedroom house.

12. On February 17, 2004, the Planning and Permit Center sent a letter to Conrardy Stowe LLC through which they effectively denied development rights to Lot 14 on the basis of non-compliance with the aggregation requirement.

13. The explanation was that the Lot of Record Certification, though made during the "window" period, did not vest to authorize development on substandard lots unless a



development permit had also been issued during the "window" period. The letter shows that the Planning and Permit Center was under the impression that the Onsite Sewage Permit for Lot 14 was issued to Conrardy Stowe after the "window" had closed. This was factually incorrect.

14. The February 14, 2004 letter stated that the on-site sewage disposal system on Lot 14 could only be installed for an accessory dwelling, a temporary mobile home or manufactured home for elder care or temporary use by a recreational vehicle. In other words, development of Lot 14 as a separate lot was denied. It is this determination that is under appeal in this case.

15. Under SCC 14.04.020 a "development permit" is:

Any land use discretionary or environmental permit or license required from a local government for a project action, including but not limited to, construction or exterior alteration of structures, dredging, dumping, filling, earth movement, clearing or removal of vegetation . . . or other site disturbance which either requires a permit, approval or authorization from the County or its proposed by a public agency . . . .

16. Under SCC 14.04.020, a "lot of record" is, among other things, any tract of land platted and recorded with the auditor prior to March 1, 1965.

17. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SCC 14.06.050(1(a)(xii).

2. Lot 14 is a "lot of record." It was legally created.

3. The Onsite Sewage Permit issued to Conrardy Stowe in January of 2001 was a "development permit," issued within the "window" during which SCC 14.16.850(4) as initially enacted was in force.

4. The County's position is that lot of record certification during the "window" period does not operate to authorize development of such lots unless a "development permit" was issued during the window. There is no quarrel here with this legal position.

5. Because, a "development permit" relating to Lot 14 was issued during the "window" period, development rights for that lot vested and additional development

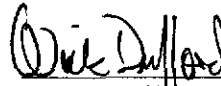


permits for completion of a separate residential building project on that lot should be available.

6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

### DECISION

The Lot of Record Certification (PL00-0687) is affirmed. The denial of development rights for Lot 14 is reversed. Any further permits for building on that lot shall comply with applicable requirements of the Skagit County Code, but aggregation of Lots 14 and 15 shall not be required as a precondition to the issuance of such permits.



Wick Dufford, Hearing Examiner

Date of Action: January 31, 2005

Copy Transmitted to Appellant: January 31, 2005.

### RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days after the date of this decision. As provided in SCC 14.06.110(13), the decision may be appealed to the Board of County Commissioners By filing a written Notice of Appeal with the Clerk of the Board within 14 days after the date of the decision, or decision on reconsideration, if applicable.

